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 Federal Communications Commission  
 Washington, D.C. 20554

DISPATCHED BY

MM Docket No. 95-34

In the Matter of

Amendment of Section 73.202(b) RM-8600  
 Table of Allotments, RM-8654  
 FM Broadcast Stations.  
 (Rapid City and Lead, South Dakota)<sup>1</sup>

**REPORT AND ORDER**  
**(Proceeding Terminated)**

Adopted: July 7, 1995;

Released: July 17, 1995

By the Chief, Allocations Branch:

1. At the request of Conway Broadcasting ("petitioner"), the Commission has before it the *Notice of Proposed Rule Making*, 10 FCC Rcd 3322 (1995), proposing the allotment of Channel 222C at Rapid City, South Dakota, as the community's seventh local FM transmission service (RM-8600). Petitioner filed comments in support of the proposal reaffirming its intention to apply for the channel, if allotted. Comments and a counterproposal were filed by Associated Investors, Inc. ("AII"), proposing the allotment of Channel 222C at Lead, South Dakota, as the community's first local aural transmission service (RM-8654).<sup>2</sup> Petitioner and AII filed reply comments. Petitioner also filed a letter requesting that its reply comments be considered in response to AII's counterproposal.

2. In support of its counterproposal, AII states that Lead is an incorporated community with a population of 3,632 persons,<sup>3</sup> and has an elected government consisting of a mayor and four commissioners. Lead also has a city hall, police department, fire department, library, post office, zip code, an elementary school, and a regional high school. In addition, Lead has hotels, inns, clubs and civic organizations. AII avers that the Commission has long recognized the importance of providing a community with its first local aural transmission service, citing *Atchison et al.*, Kansas 7 FCC Rcd 4645 (1992); *Alegria I, Inc.*, 61 RR 2d 136 (1986), *recon. denied*, 2 FCC Rcd 1762 (1987); *Caldwell Broadcasting Corp.*, 100 FCC 2d 115 (1985), *rev. denied*, 104 FCC 2d 438 (1986); and *Alessandro Broadcasting Corp.*, 99 FCC 2d 1 (1984), *rev. denied*, FCC 84-334 (rel. June 28, 1985). Therefore, pursuant to the FM allotment priorities,

AII asserts that a first local aural transmission service at Lead is preferred over a thirteenth local transmission service at Rapid City. See n.4, *infra*. AII states that Rapid City already has six FM stations, four AM stations and two noncommercial educational stations. AII urges that Channel 222C be allotted at Lead in lieu of Rapid City, South Dakota, and AII states its intention to apply for the channel.

3. In its reply comments, petitioner proposes an alternative counterproposal recommending that Channel 277C be allotted at Lead in lieu of Channel 222C, in order to resolve the conflict. To accommodate the allotment at Lead, petitioner also proposes the substitution of Channel 252A for vacant and unapplied for Channel 276A at Sundance, Wyoming, thereby accommodating both requests for the allotment of Class C channels at Rapid City and Lead, South Dakota. In view of its alternative proposal, petitioner suggests that the two proposals be severed to avoid complication and unnecessary delay in the implementation of an additional service at Rapid City. Petitioner urges that the Commission allot Channel 222C at Rapid City and allot Channel 277C at Lead.

4. In response to petitioner's recommendation that alternate Channel 277C be allotted at Lead, AII argues that petitioner's counterproposal should be rejected because Commission precedent is clear that the introduction of the community of Sundance, Wyoming, which was not part of the initial proposal or counterproposal, constitutes an untimely filed counterproposal and cannot be accepted and considered, citing 47 C.F.R. Section 1.420(d); *Ashland, California Rolla and Monroe City, Missouri*, 8 FCC Rcd 1799 (1993), *modified on recon. on other grounds*, 9 FCC Rcd 2306 (1994); *Grenada, Artesia and Okolona, Mississippi*, 7 FCC Rcd 4838 (1992).<sup>4</sup> AII reiterates its earlier argument that under FM allotment priorities a first local transmission service at Lead should be preferred over a thirteenth local service at Rapid City. Accordingly, AII reaffirms its intention to apply for Channel 222C if allotted to Lead in lieu of Rapid City, South Dakota.

5. After careful consideration of the information before us, we believe that each of the communities is deserving of a new Class C channel. Conflicting proposals are comparatively considered under the guidelines set forth in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).<sup>5</sup> However, because an alternate Class C channel has been found for the counterproposal at Lead, South Dakota, such a comparison is no longer necessary. We believe the public interest would best be served by allotting Channel 222C at Rapid City, South Dakota, as its seventh local FM transmission service, and Channel 232C<sup>6</sup> at Lead, South Dakota, as its first local aural transmission service. An engineering analysis has determined that Channel 222C can be allotted at Rapid City in compliance with the Commission's minimum distance separation requirements at city reference coordinates.<sup>7</sup> Additionally, Channel 232C can be allotted to Lead in compliance with the Commission's

<sup>1</sup> The community of Lead, South Dakota, has been added to the caption.

<sup>2</sup> Public Notice was given to the counterproposal on June 2, 1995, Report No. 2075

<sup>3</sup> Population figure taken from the 1990 U.S. Census.

<sup>4</sup> All claims that since petitioner's counterproposal must be rejected, the Commission must likewise render its suggestion of severance as moot.

<sup>5</sup> The FM allotment priorities are: 1) First full-time aural ser-

vice; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. [Co-equal weight given on priorities (2) and (3).]

<sup>6</sup> We note that the Commission may allot an alternate channel in order to resolve conflicts between proposals. See *Notice, Appendix 3(c)*; see also *Pinewood, South Carolina*, 5 FCC Rcd 7609 (1990).

<sup>7</sup> The coordinates for Channel 222C at Rapid City are North Latitude 44-04-50 and West Longitude 103-13-50.

minimum distance separation requirements with a site restriction of 51.7 kilometers (32.2 miles) northwest to avoid a short-spacing to Station KMKK(FM), Channel 230C1, Rapid City, South Dakota.<sup>8</sup>

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **August 31, 1995**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

City	Channel
Rapid City,	222C, 230C1, 250C1, 254C1,
South Dakota	262C1, 281C1, 292C
Lead, South Dakota	232C

7. The window period for filing applications for Channel 222C at Rapid City, South Dakota, and for Channel 232C at Lead, South Dakota, will open on **August 31, 1995**, and close on **October 2, 1995**.

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau (202) 418-2700.

#### FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

<sup>8</sup> The coordinates for Channel 232C at Lead are North Latitude 44-38-57 and West Longitude 104-15-47.